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EXAMINER
STRIMBU, G

ART UNIT	PAPER NUMBER
3634	

DATE MAILED: 05/04/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Office Action Summary

Application No.
09/004,803

Applicant(s)
Epps et al.

Examiner
Gregory J. Strimbu

Group Art Unit
3634



☒ Responsive to communication(s) filed on Feb 16, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-10 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-10 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on Jan 9, 1998 is/are objected to by the Examiner.

☒ The proposed drawing correction, filed on Feb 16, 1999 is ☒ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3634

Drawings

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on February 16, 1999 have been approved.

The drawings, however, are objected to because throughout the figures several of the lead lines fail to accurately indicate the element of the invention to which a respective reference character refers. For example, see figure 1, wherein the lead line for reference character "31" fails to accurately indicate a fastener. Although the drawings have been indicated as informal, the applicant is reminded that all cross-sectional views and partial sectional views, such as the one shown in figure 1, require proper cross-sectional shading to indicate the material from which the element(s) of the invention are made. See MPEP 608.02. In figure 1, it appears that the portion of the top frame member 19 which is hidden from view by the building wall 10 should be shown with hidden lines to indicate the proper spacial relationship with respect to the building wall 10. In figure 5, the reference characters "16" and "17" each require a lead line indicating the element of the invention to which each of the reference characters respectively refers. Correction is required.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the motor assembly must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Art Unit: 3634

Although the examiner agrees that showing the window motor operator assembly is not essential to the understanding of the applicant's invention, it is nonetheless required since the applicant has claimed such a structure. See 37 CFR 1.83(a).

Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect can be deferred until the application is allowed by the examiner.

Claim Objections

Claim 1 is objected to because there appears to be a superfluous space following "member" on line 2. Claims 4 and 9 are objected to because the recitation "fast food" on line 1 does not agree with the preamble claim 3. It is therefore suggested that the applicant change "fast food" to --fast-food-- to agree with claim 3. Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 6, 8 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "the centerline of said sensor" on line 2 of claim 6 render the claims indefinite because they lack antecedent basis. Recitations such as "the vertical axis" on line 3 of claim 6 render the claims indefinite because they lack antecedent basis. Recitations such as "at

Art Unit: 3634

least one sensor” on line 2 of claim 8 render the claims indefinite because it is unclear if the sensor comprises one of the sensors set forth above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art of figure 5 in view of Boiucaner. The admitted prior art of figure 5 discloses a fast food service window comprising a window assembly with at least one movable window member 16, a window motor operator assembly (not shown, but disposed behind upper frame member 21) mechanically coupled to the movable window member 16, proximity sensor 60 electrically coupled to the motor operator assembly, wherein the movable window member 16 opens whenever a person is sensed by the proximity sensor 60. The movable window member 16 is opened when an infrared beam is detected by an infrared receiver 62 and is closed when the infrared beam is not detected by the infrared receiver 62. The sensor 60 has an integral emitter 61 and receiver 62. The admitted prior art of figure 5 is silent concerning focusing a plurality of sensors upwardly.

Art Unit: 3634

However, Boiucaner, in figure 2, discloses a sensor 10 having a plurality of integral infrared emitters 24 and sensors 26. The centerline of the sensor 10 and the centerlines of the emitters 24 and sensors 26 are slightly askew with respect to a vertical axis. The sensor 10 is angled such that it will only operate the door when a person is in a predetermined desired position.

It would have been obvious to one of ordinary skill in the art to position a plurality of sensors of the admitted prior art of figure 5 upwardly to only operate the door when a person is in a desired predetermined position, as taught by Boiucaner, to prevent the door from unexpectedly opening, to conserve energy and to increase the working life of the door.

Response to Arguments

Applicant's arguments filed February 16, 1999 have been fully considered but they are not persuasive.

With respect to the applicant's comments concerning the 103(a) rejection above, the examiner respectfully disagrees. Boiucaner discloses the use of a sensor 10 which senses when a person is in a range of particular predetermined positions with respect to the door and only actuates the door opening mechanism when a person is within that range. Thus, Boiucaner teaches orienting a sensor to operate an opening mechanism when a certain set of conditions, i.e., a person is in the particular range predetermined positions, are sensed.

Art Unit: 3634

The admitted prior art in figure 5 discloses a sensing system wherein the sensor actuates an opening mechanism when a person is in a predetermined range of positions. However, because of the narrow infrared beam used by the sensor, the predetermined range of positions is limited to only a vertical position in close proximity to the sensor. Boiucaner's sensor, on the other hand, has the capability of using a greater range of predetermined positions to actuate the opening mechanism.

When one with ordinary skill in the art is presented with problems created by the limited range of the sensor of the admitted prior art in figure 5 and the teachings of Boiucaner, he or she would replace the sensor of the admitted prior art in figure 5 with the sensor of Boiucaner. Although Boiucaner discloses orienting the sensor in a downward position, Boiucaner teaches placing the sensor in a particular orientation for a particular use, i.e., sensing when a person is close enough to the door to warrant opening the door. One with ordinary skill in the art, armed with the particular orientation for a particular use teaching of Boiucaner and his or her common sense, would orient the sensor in a way which would yield the best results for the fast food window use. It is the examiner's position that the best results for the fast food window application would be an upward orientation since the feet of the workers might be undesirably sensed by the sensor. Thus, by orienting the sensor in an upward position, it would only be able sense a person when that person was in position to use the window. Moreover, Jonsson and Hagenbook disclose orienting infrared sensors in an upward orientation in figure 4.

Art Unit: 3634

The examiner appreciates the applicant's comments concerning the alleged inability of the industry to provide an adequate solution to the problems set forth by the applicant, however, attorney arguments cannot take the place of factual evidence of record. *In re Schulze*, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is (703) 305-3979. The examiner can normally be reached on Monday through Friday from 8:00 A.M. to 4:30 P.M. The

Art Unit: 3634

fax phone number for this Group is (703) 305-3597. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

5/3/99

GJS

GJS

A handwritten signature in cursive script that reads "Daniel P. Stodola". The signature is written in black ink and is positioned to the right of the date and initials.

Daniel P. Stodola
Supervisory Patent Examiner
Group 3600